

## Federal Acquisition Regulation

## 9.105-1

(c) If the contracting officer obtains relevant information from FAPIIS regarding criminal, civil, or administrative proceedings in connection with the award or performance of a Government contract; terminations for default or cause; determinations of nonresponsibility because the contractor does not have a satisfactory performance record or a satisfactory record of integrity and business ethics; or comparable information relating to a grant, the contracting officer shall, unless the contractor has already been debarred or suspended—

(1) Promptly request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, if the information appears appropriate for the official's consideration.

(d) The contracting officer shall document the contract file for each contract in excess of the simplified acquisition threshold to indicate how the information in FAPIIS was considered in any responsibility determination, as well as the action that was taken as a result of the information. A contracting officer who makes a nonresponsibility determination is required to document that information in FAPIIS in accordance with 9.105-2 (b)(2).

[75 FR 14065, Mar. 23, 2010]

### 9.104-7 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 52.209-7, Information Regarding Responsibility Matters, in solicitations where the resultant contract value is expected to exceed \$500,000.

(c) The contracting officer shall insert the clause at 52.209-9, Updates of

Publicly Available Information Regarding Responsibility Matters—

(1) In solicitations where the resultant contract value is expected to exceed \$500,000; and

(2) In contracts in which the offeror checked "has" in paragraph (b) of the provision 52.209-7.

[73 FR 21798, Apr. 22, 2008. Redesignated and amended at 75 FR 14065, Mar. 23, 2010; 77 FR 201, Jan. 3, 2012]

## 9.105 Procedures.

### 9.105-1 Obtaining information.

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning (i) the low bidder or (ii) those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs,

the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) In making the determination of responsibility, the contracting officer shall consider information in FAPIIS (see 9.104-6), including information that is linked to FAPIIS such as from the System for Award Management Exclusions and the Past Performance Information Retrieval System (PPIRS), and any other relevant past performance information (see 9.104-1(c) and subpart 42.15). In addition, the contracting officer should use the following sources of information to support such determinations:

(1) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(2) The prospective contractor—including bid or proposal information (including the certification at 52.209-5 or 52.212-3(h) (see 9.104-5)), questionnaire replies, financial data, information on production equipment, and personnel information.

(3) Commercial sources of supplier information of a type offered to buyers in the private sector.

(4) Preaward survey reports (see 9.106).

(5) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

[48 FR 42142, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 52 FR 9038, Mar. 20, 1987; 54 FR 19813, May 8, 1989; 60 FR 16718, Mar. 31, 1995; 60 FR 33065, June 26, 1995; 61 FR 39201, July 26, 1996; 69 FR 76349, Dec. 20, 2004; 73 FR 21798, Apr. 22, 2008; 74 FR 31560, July 1, 2009; 75 FR 14066, Mar. 23, 2010; 78 FR 37678, June 21, 2013]

#### 9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in subpart 19.6. When a Certificate of Competency is issued for a small business concern (see subpart 19.6), the contracting officer shall accept the Small Business Administration's decision to issue a Certificate of Competency and award the contract to the concern.

(b) *Support documentation.* (1) Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, the use of FAPIIS information (see 9.104-6), and any applicable Certificate of Competency, must be included in the contract file.

(2)(i) The contracting officer shall document the determination of nonresponsibility in FAPIIS (available at [www.cpars.csd.disa.mil](http://www.cpars.csd.disa.mil), then select FAPIIS) if—

(A) The contract is valued at more than the simplified acquisition threshold;

(B) The determination of nonresponsibility is based on lack of satisfactory performance record or satisfactory record of integrity and business ethics; and

(C) The Small Business Administration does not issue a Certificate of Competency.

(ii) The contracting officer is responsible for the timely submission, within 3 working days, and sufficiency, and accuracy of the documentation regarding the nonresponsibility determination.

(iii) As required by section 3010 of the Supplemental Appropriations Act, 2010